

United States
Circuit Court of Appeals

For the Ninth Circuit.

CALIFORNIA CENTURY COMPANY, a California Corporation, and RAYMOND LEWIS, doing business as Lewis Construction Company,
Appellants,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the
United States for the Southern District
of California, Central Division.

FILED

MAY 11 1942

PAUL P. O'BRIEN,

United States
Circuit Court of Appeals

For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the Southern District of California, Central Division.

No. 1167 R J. Civil

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association,
Plaintiff,

vs.

CALIFORNIA CENTURY CORPORATION, a California corporation, RAYMOND LEWIS, doing business as Lewis Construction Company, and PAUL W. SAMPSELL, Trustee of the Estate of Raymond Lewis, Debtor, a Bankrupt,
Defendants.

COMPLAINT TO SET ASIDE FRAUDULENT TRANSFER OF SHARES OF STOCK.

Plaintiff complains and alleges:

I.

That plaintiff is a national banking association organized and existing under the laws of the United States of America with its principal place of business in the City of Los Angeles, County of Los Angeles, State of California.

II.

That defendant, California Century Company, was at all times herein mentioned and now is a corporation organized and existing under the laws

of the State of California having its principal place of business in the County of Los Angeles, State of California.

III.

That on the 29th day of April, 1940, an involuntary petition for the adjudication in bankruptcy of the defendant, Raymond Lewis, doing business as Lewis Construction Company, was filed in the District Court of the United States, Southern District of California, Central Division, case No. 36226 C, and that thereafter the defendant, Paul W. Sampsell, was appointed and now is Receiver in Bankruptcy of the Estate of said Raymond Lewis, doing [2] business as Lewis Construction Company, a bankrupt; that among the assets of said estate is listed a total of 268,132 shares of capital stock of Amusement Enterprises, Inc.

IV.

That on or about the 9th of January, 1939, plaintiff, as lessor, made a lease of certain real property to said California Century Corporation, as lessee; that said lessee failed and refused to pay certain amounts due under said lease and that thereafter the plaintiff instituted an action against said lessee; that thereafter, on the 20th day of March, 1940, in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, judgment was rendered and entered in favor of plaintiff and against said California Century Corporation, as defendant, for amounts due on said

lease in the sum of \$870.00 principal, \$50,000 attorney's fees, \$22.30 interest and costs in the sum of \$6.00.

V.

That on or about the 22nd day of April, 1940, an execution was issued upon said judgment against the property of said California Century Corporation addressed to the Marshal of the City of Los Angeles, County of Los Angeles, State of California, and that said execution has been returned by the said Marshal entirely unsatisfied.

VI.

That plaintiff is informed and believes and therefore alleges that defendant, Raymond Lewis, doing business as Lewis Construction Company, was at all times herein mentioned and now is an officer, to-wit, the President of said California Century Corporation and that at all times herein mentioned, said Raymond Lewis, doing business as Lewis Construction Company, was and now is the principal stockholder of said corporation.

VII.

That plaintiff is informed and believes and, basing its allegations upon such information and belief, alleges that on or [3] about the 9th day of November, 1939, the said California Century Corporation transferred and assigned all of its assets to Amusement Enterprises, Inc. and received therefor, in consideration of said transfer and assign-

ment, shares of capital stock of said Amusement Enterprises, Inc. in the amount of approximately 268,132 shares.

VIII.

That plaintiff is informed and believes and, basing its allegations upon such information and belief, alleges that thereafter and subsequent to the 11th day of January, 1939, and for the purpose of defrauding its creditors and particularly plaintiff herein, the said California Century Corporation transferred and assigned all of said shares of stock of Amusement Enterprises, Inc. in the approximate amount of 268,132 shares to the defendant herein, Raymond Lewis, doing business as Lewis Construction Company; that the purported consideration received by said California Century Corporation for said assignment and transfer of said stock was the assignment and transfer to said California Century Corporation by the defendant, Raymond Lewis, doing business as Lewis Construction Company, of approximately 1380 shares of capital stock of said California Century Corporation; that at the time of said transaction, the capital stock of said California Century Corporation was valueless for the reason as hereinabove alleged that said corporation had theretofore transferred and assigned all of its assets to said Amusement Enterprises, Inc.; that at the time of said transaction, said California Century Corporation had no assets whatsoever except its interest in said capital stock of Amusement Enterprises, Inc. in the approximate amount of 268,132

shares; that said California Century Corporation was rendered insolvent by said transaction and ever since has been and now is insolvent; that said transfer of the capital stock of Amusement Enterprises, Inc. to Raymond Lewis, doing business as Lewis Construction Company, was made with the intent and for the purpose of defrauding plaintiff of the money so due it and of preventing it [4] from collecting the same and that said Raymond Lewis participated in said fraudulent intent and took the said transfer and assignment of said shares of stock of Amusement Enterprises, Inc. with the intent and for the purpose of assisting and aiding said California Century Corporation in evading payment of said indebtedness and for the purpose of preventing plaintiff from collecting same; that plaintiff was, prior to the time of said transfer and assignment and ever since has been, and now is a creditor of said California Century Corporation.

IX.

That plaintiff is informed and believes and, upon such information and belief, alleges that the said California Century Corporation has no property other than the said shares of stock in Amusement Enterprises, Inc. in the approximate amount of 268,132 shares, as set out in this complaint, from which the plaintiff's said execution can be satisfied in whole or in part; and that unless the said shares of stock in Amusement Enterprises, Inc., in the approximate amount of 268,132 shares, or a sufficient

portion thereof, can be applied to the payment of the said judgment in favor of plaintiff, the same must remain wholly unpaid.

X.

That on the 28th day of August, 1940, Hugh L. Dickson, Referee in Bankruptcy in the matter of Raymond Lewis, doing business as Lewis Construction Company, Debtor, made his order permitting plaintiff to institute proceedings in the District Court of the United States, Southern District of California, Central Division, against the defendant, Raymond Lewis, Debtor in said bankruptcy proceedings, and against the defendant, Paul W. Sampsell, Receiver in said bankruptcy proceedings, for the purpose of setting aside the alleged fraudulent conveyances herein mentioned.

Wherefore, plaintiff prays:

1. That the said assignment of approximately 268,132 [5] shares of stock by California Century Corporation to Raymond Lewis, doing business as Lewis Construction Company, and that the assignment by operation of law from said Raymond Lewis, doing business as Lewis Construction Company, to defendant, Paul W. Sampsell, Receiver in Bankruptcy of the Estate of Raymond Lewis, doing business as Lewis Construction Company, bankrupt, be declared fraudulent and void and of no effect and that said shares of stock be adjudged and decreed to be the property of defendant, California Century Corporation.

2. For such other and further relief as to the court may seem equitable.

HELGOE AND HART

By HOWARD W. HART

Attorneys for plaintiff [6]

United States of America

Southern District of California

Central Division—ss.

J. A. Carter being by me first duly sworn, deposes and says: that he is the Assistant Vice-President of the plaintiff, Security-First National Bank of Los Angeles in the above entitled action; that he has read the foregoing Complaint to Set Aside Fraudulent Transfer of Shares of Stock and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

J. A. CARTER

Subscribed and sworn to before me this 18th day of September, 1940.

[Seal]

HOWARD W. HART

Notary Public in and for the County of Los Angeles, State of California.

Served on Raymond Lewis 10/1/40

[Endorsed]: Filed Sep. 18, 1940. [7]

[Title of District Court and Cause.]

ANSWER OF CALIFORNIA CENTURY
COMPANY.

Comes now California Century Company, sued herein as California Century Corporation, and for itself only, and not for or on behalf of any other defendant, in answer to plaintiff's complaint, admits, alleges and denies as follows:

I.

This defendant admits the allegations of Paragraph 1 of plaintiff's complaint.

II.

Answering Paragraph II of plaintiff's complaint, this defendant denies the allegations thereof, and alleges that this defendant's name is California Century Company, and that it is a [8] corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business in the County of Los Angeles.

III.

This defendant admits the allegations of Paragraphs III, IV and V of plaintiff's complaint.

IV.

This defendant denies the allegations of Paragraph VI and alleges that defendant Raymond Lewis was and is the president of the California

Century Company, defendant herein, and was and is one of the stockholders thereof.

V.

This defendant denies generally and specifically the allegations of Paragraph VII of plaintiff's complaint.

VI.

In answer to Paragraph VIII of plaintiff's complaint, this defendant denies that on the 11th day of January, 1940, or subsequent thereto, or at any other time, this defendant, for the purpose of defrauding its creditors, or for the purpose of defrauding any creditor, transferred and/or assigned 268,132, or any number of shares, of stock of the Amusement Enterprises, Inc. to Raymond Lewis, doing business as Lewis Construction Company, or to any other person. Denies that the consideration received by this defendant for said assignment and transfer of stock was the assignment and/or transfer to this defendant by said defendant Raymond Lewis of 1370 shares of stock of this defendant corporation. Denies at that time the capital stock of this defendant corporation was valueless. Denies that this defendant had transferred and/or assigned all of its assets to said Amusement Enterprises, Inc. Denies that at the time of said transaction this defendant had no assets other than the capital stock in the Amusement Enterprises, Inc. Denies that this defendant was rendered insolvent by said [9] transaction. Denies that it ever since has been in-

solvent. Denies that said transfer of capital stock, or any transfer, to Raymond Lewis doing business as Lewis Construction Company was made with the intent and/or for the purpose of defrauding plaintiff or any other creditor of any money due it or any creditor, or for the purpose of preventing plaintiff, or any other creditor from collecting same. Denies that said defendant Lewis participated in any fraudulent intent, or that this defendant participated in any fraudulent intent. Denies that said defendant Lewis took said transfer and/or assignment of said shares of stock, of the Amusement Enterprises, Inc., with the intent and/or for the purpose of assisting and aiding, or assiting or aiding this defendant in evading payment of any indebtedness due to this plaintiff or for the purpose of preventing plaintiff from collecting same. Denies that this plaintiff was prior to the time of said transfer and/or assignment a creditor of this defendant.

VII.

This defendant denies generally and specifically the allegations of Paragraph IX of plaintiff's complaint.

VIII.

Answering the allegations of Paragraph X of plaintiff's complaint, this defendant has no information or knowledge as to the allegations thereof, and had no knowledge or notice thereof, and alleges that if said order permitting plaintiff to institute these proceedings was made, said order was made ex

parte, without any knowledge on the part of this defendant, and without any notice, and that said order is invalid and void.

Wherefore, this defendant prays that plaintiff may take nothing by reason of its complaint on file herein, for costs herein incurred, and for such other and further relief [10] as the court may deem meet and proper in the premises.

JOSEPH MUSGROVE,

F. O. McGIRR.

THOS. H. CANNAN,

By JOS. MUSGROVE,

Attorneys for defendant, California Century Company.

State of California,
County of Los Angeles—ss.

Raymond Lewis being by me first duly sworn, deposes and says: that he is the President of the California Century Company, a corporation, and makes this verification for and on *behalf corporation* defendant in the above entitled action; that he has heard read the foregoing Answer of California Century Company and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ RAYMOND LEWIS

Subscribed and sworn to before me this 14 day of October, 1940.

[Seal] ALICE B. RANDOLPH

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Oct. 18, 1940. [11]

[Title of District Court and Cause.]

ANSWER OF LEWIS CONSTRUCTION
COMPANY.

Comes now Raymond Lewis doing business under the fictitious firm name of Lewis Construction Company, defendant in the above entitled action, and for himself and not for or on behalf of any other defendant, admits, alleges and denies as follows:

I.

This defendant admits the allegations of Paragraphs I and III of plaintiff's complaint.

II.

In answer to Paragraph II of plaintiff's complaint, this defendant alleges that defendant sued herein as California [12] Century Corporation, the true name of said corporation is California Century Company.

III.

This defendant admits the allegations of Paragraphs IV and V of plaintiffs' complaint.

IV.

This defendant admits the allegations of Paragraph VI of plaintiff's complaint, except that the true name of said corporation is California Century Company, and that he is one of the large stockholders thereof.

V.

This defendant denies generally and specifically the allegations of Paragraph VII of plaintiff's complaint.

VI.

In answer to Paragraph VIII of plaintiff's complaint, this defendant denies subsequent to the 11th day of January, 1940, for the purpose of defrauding its creditors, or for any other purpose, the California Century Company transferred and/or assigned all of the shares of stock of the Amusement Enterprises, Inc. to the defendant Raymond Lewis. Denies that the consideration received for the said assignment and transfer or for the assignment or transfer of said stock by the California Century Company was 1380 shares of the capital stock of said California Century Company. Denies that the capital stock of the California Century Company was valueless, at the time of said transaction, or at any other time. Denies that said corporation transferred and/or assigned all of its assets to said Amusement Enterprises, Inc. Denies at the time of said transaction said California Century Company had no assets whatever, excepting its interest in the

capital stock of the Amusement Enterprises, Inc. Denies that said California Century Company was rendered insolvent by said transaction. Denies that said transfer of said capital stock of the Amusement Enterprises, Inc. to this [13] defendant was made with intent and/or for the purpose of defrauding plaintiff, or any creditor, of money due it or them. Denies it deprived it from collecting same. Denies that this defendant participated in said fraudulent intent, or any fraudulent intent. Denies that this defendant took said transfer and/or assignment of said shares of stock of the Amusement Enterprises, Inc. with intent and/or for the purpose of aiding and/or assisting said California Century Company in evading payment of its debts to this plaintiff or its creditors, or for the purpose of preventing plaintiff or any creditor from collecting same. Denies that plaintiff prior to the time of said transfer and assignment or transfer or assignment was a creditor of the California Century Company.

VII.

This defendant denies each and every allegation of Paragraph IX of plaintiff's complaint.

VIII.

In answer to Paragraph X of plaintiff's complaint, this defendant had no information, knowledge or notice of an order made by Hugh L. Dickson, Referee in Bankruptcy, and if same was made it was made *ex parte* without notice to this defendant, and that same is void and invalid.

Wherefore, this defendant prays that plaintiff may take nothing by reason of its complaint on file herein, for costs herein incurred and for such other and further relief as the Court may deem meet and proper.

JOSEPH MUSGROVE,
F. O. McGIRR,
THOS. H. CANNAN,

By JOS. MUSGROVE,

Attorneys for Defendant Raymond Lewis doing business as Lewis Construction Company.

[14]

State of California,
County of Los Angeles—ss.

Raymond Lewis being by me first duly sworn, deposes and says: that he is the defendant in the above entitled action doing business under the fictitious firm name of Lewis Construction Company, defendant in the above entitled action; that he has heard read the foregoing Answer of Lewis Construction Company and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

RAYMOND LEWIS

Subscribed and sworn to before me this 14 day of October, 1940.

[Notarial Seal] ALICE B. RANDOLPH

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Oct. 18, 1940. [15]

[Title of District Court and Cause.]

MEMORANDUM DECISION.

Helgoe & Hart by Howard W. Hart, Esquire, of Los Angeles, California, for Plaintiff.

Rupert B. Turnbull, Esquire, of Los Angeles, California, for Paul W. Sampsel, Receiver.

Joseph Musgrove, Esquire, of Los Angeles, Calif. for Raymond Lewis, doing business as Lewis Construction Company, and for California Century Corporation, (Company).

O'Connor, J. F. T., District Judge.

The court finds that the assignment of approximately 268,132 shares of stock by the California Century Company to Raymond Lewis, doing business as Lewis Construction Company, and the assignment by operation of law from said Raymond Lewis, doing business as Lewis Construction Company to defendant, Paul W. Sampsell, receiver in Bankruptcy of the estate of Raymond Lewis, doing business as Lewis Construction Company, bankrupt,

was fraudulent and void and of no effect, and the court further finds that the said shares of stock are the property of defendant, California Century Company. Costs will be allowed the plaintiff.

Dated September 5, 1941.

J. F. T. O'CONNOR

United States District Judge

[Endorsed]: Filed Sep. 5, 1941. [16]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW.

The above entitled cause came on regularly for trial on the 3rd day of June, 1941, before the Court, sitting without a jury, the Honorable J. F. T. O'Connor, Judge Presiding, Helgoe and Hart, by Howard W. Hart, appearing as attorneys for the plaintiff, Security-First National Bank of Los Angeles, Joseph Musgrove, F. O. McGirr and Thos. H. Cannan, by Joseph Musgrove, appearing as attorneys for the defendants, California Century Company and Raymond Lewis, doing business as Lewis Construction Company, and Rupert B. Turnbull appearing as attorney for the defendant, Paul W. Sampsell, Receiver in Bankruptcy of the Estate of Raymond Lewis, doing business as Lewis Construction Company, a Bankrupt, and evidence, both oral and written, having been introduced and the

cause submitted for decision, the Court now makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT.

I.

That plaintiff is a national banking association organized and existing under and by virtue of the laws of the United States of [17] America with its principal place of business in the City of Los Angeles, County of Los Angeles, State of California.

II.

That defendant, California Century Company, was at all times herein mentioned and now is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of Los Angeles, County of Los Angeles, State of California.

III.

That on or about April 29, 1940 an involuntary petition in bankruptcy was filed against the defendant, Raymond Lewis, doing business as Lewis Construction Company; that said bankruptcy proceedings were at all times thereafter and are in the District Court of the United States, Southern District of California, Central Division, case No. 36226-C.

IV.

That thereafter and prior to the institution of this action the defendant, Paul W. Sampsell, was

appointed Receiver in said bankruptcy proceedings of the estate of said Raymond Lewis, doing business as Lewis Construction Company, a bankrupt, and at all times since has been and now is said Receiver.

V.

That among the assets of said estate are 268,132 shares of capital stock of Amusement Enterprises, Inc., and that the defendant, Paul W. Sampsell, holds said shares of stock as such Receiver.

VI.

That from and continuously after January 9, 1939 plaintiff has been and now is a creditor of the defendant, California Century Company.

VII.

That on or about March 19, 1940 plaintiff obtained a judgment against the defendant, California Century Company, in the [18] Municipal Court of the City of Los Angeles in the amount of \$949.30, case No. 537,104.

VIII.

That on or about May 3, 1940 the Marshal of the City of Los Angeles made a nulla bona return of execution on said judgment, and that said judgment is entirely unsatisfied.

IX.

That at all times herein mentioned defendant, Raymond Lewis, has been and now is the president and a director of the defendant, California Century Company.

X.

That at all times herein mentioned defendant, Raymond Lewis, has been and now is the president and a director of Amusement Enterprises, Inc., which is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of Los Angeles, County of Los Angeles, State of California.

XI.

That the total outstanding shares of stock of California Century Company during all times herein mentioned were and are 2500 shares; that at the time plaintiff became a creditor of defendant, California Century Company, to-wit, on January 9, 1939, and at all times thereafter said Raymond Lewis has been the owner of all of the shares of stock of said corporation, except two shares which were purportedly owned by other directors.

XII.

That subsequent to the time plaintiff became a creditor of said defendant, California Century Company, and pursuant to a permit issued by the Corporation Commissioner of the State of California, dated January 11, 1939, said defendant, California Century Company, conveyed, transferred and assigned all of its assets, both real and personal, with the exception of a certain parcel of real property [19] referred to as the "parking lot", to Amusement Enterprises, Inc. in exchange for 268,132

shares of capital stock of Amusement Enterprises, Inc.

XIII.

That subsequently all of the shares of stock so acquired by defendant, California Century Company, in exchange for the assets so transferred to Amusement Enterprises, Inc., to-wit, the sum of 268,132 shares of stock in Amusement Enterprises, Inc., were transferred to defendant, Raymond Lewis, doing business as Lewis Construction Company.

XIV.

That there was in fact no valuable consideration for the said transfer of said shares of stock of Amusement Enterprises, Inc. from California Century Company to defendant, Raymond Lewis, doing business as Lewis Construction Company.

XV.

That the said transfer of said shares of stock of Amusement Enterprises, Inc. to defendant, Raymond Lewis, doing business as Lewis Construction Company, rendered the defendant, California Century Company, insolvent.

XVI.

That there was in fact no immediate delivery of said shares of stock of Amusement Enterprises, Inc. to defendant, Raymond Lewis, doing business as Lewis Construction Company, at the time of said transfer, nor was said transfer followed by any

actual or continued change of possession of said shares of stock.

XVII.

That the said transfer of said shares of stock in Amusement Enterprises, Inc. to defendant, Raymond Lewis, doing business as Lewis Construction Company, was voluntary and was made for the purpose of defrauding creditors of defendant, California Century Company; that defendant, Raymond Lewis, doing business as Lewis [20] Construction Company, knew the facts pertaining to said transfer, knew at the time of said transfer that defendant, California Century Company, would be rendered insolvent by said transaction, knew that said transfer was being made for the purpose of defrauding creditors of California Century Company.

CONCLUSIONS OF LAW.

I.

That the transfer of 268,132 shares of stock in Amusement Enterprises, Inc. from California Century Company to Raymond Lewis, doing business as Lewis Construction Company, and the assignment of said shares of stock by operation of law from defendant, Raymond Lewis, doing business as Lewis Construction Company, to defendant, Paul W. Sampsell, Receiver in Bankruptcy of the Estate of Raymond Lewis, doing business as Lewis Construction Company, a bankrupt, were fraudulent and void as against Security-First National Bank of Los

Angeles, plaintiff herein, and such transfers, and each of them, should be and are annulled and set aside; that the said shares of stock are the property of the defendant, California Century Company.

II.

That plaintiff shall have judgment against defendants, California Century Company, a California corporation, and Raymond Lewis, doing business as Lewis Construction Company, for its costs incurred herein.

Let Judgment Be Entered Accordingly.

Dated: Oct. 10, 1941.

J. F. T. O'CONNOR,

Judge. [21]

The foregoing Findings of Fact and Conclusions of Law are approved as to form.

JOSEPH MUSGROVE,

F. O. McGIRR and

THOS. H. CANNAN

By.....

Attorney for California Century Company and Raymond Lewis

RUPERT B. TURNBULL,

Attorney for Paul W. Sampsell.

[Endorsed]: Filed Oct. 10, 1941. [22]

In the District Court of the United States for the Southern District of California, Central Division.

No. 1167 O'C. Civil

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association,
Plaintiff,

vs.

CALIFORNIA CENTURY COMPANY, a California corporation, RAYMOND LEWIS, doing business as Lewis Construction Company, and PAUL W. SAMPSELL, Trustee of the Estate of Raymond Lewis, Debtor, a Bankrupt,
Defendants.

JUDGMENT.

The above entitled cause came on regularly for trial on the 3rd day of June, 1941, before the Court, sitting without a jury, the Honorable J. F. T. O'Connor, Judge Presiding, Helgoe and Hart, by Howard W. Hart, appearing as attorneys for the plaintiff, Security-First National Bank of Los Angeles, Joseph Musgrove, F. O. McGirr and Thos. H. Cannan by Joseph Musgrove, appearing as attorneys for the defendants, California Century Company and Raymond Lewis, doing business as Lewis Construction Company, and Rupert B. Turnbull appearing as attorney for the defendant, Paul W.

Sampsell, Receiver in Bankruptcy of the Estate of Raymond Lewis, doing business as Lewis Construction Company, a Bankrupt, and evidence, both oral and documentary, having been introduced, and the cause having been submitted for decision, and the court having made its Findings of Fact and Conclusions of Law,

It is hereby ordered, adjudged and decreed that the assignment of shares of stock in Amusement Enterprises, Inc. from California Century Company to Raymond Lewis, doing business as Lewis Construction Company, in the amount of 268,132 shares, and the [24] assignment of said shares of stock by operation of law from defendant, Raymond Lewis, doing business as Lewis Construction Company, to defendant, Paul W. Sampsell, Receiver in Bankruptcy of the Estate of Raymond Lewis, doing business as Lewis Construction Company, a bankrupt, were fraudulent and void as against Security-First National Bank of Los Angeles, plaintiff herein, and such transfers and each of them, should be and are annulled and set aside, and the said shares of stock are the property of the defendant, California Century Company.

It is further ordered, adjudged and decreed that plaintiff, Security-First National Bank of Los Angeles, shall have judgment against the defendants, California Century Company, a California corporation, and Raymond Lewis, doing business as Lewis

Construction Company, for its costs incurred herein taxed in the amount of \$63.40.

Dated: Oct. 10, 1941.

J. F. T. O'CONNOR

Judge

Judgment entered Oct. 10, 1941.

Docketed Oct. 10, 1941.

Book C O 7 Page 85.

R. S. ZIMMERMAN, Clerk,
By FRANCIS E. CROSS, Deputy.

[Endorsed]: Filed Oct. 10, 1941. [25]

[Title of District Court and Cause.]

NOTICE OF APPEAL.

Notice is hereby given that the California Century Company, a California corporation, and Raymond Lewis, doing business as Lewis Construction Company, Defendants above named, hereby appeal to the Circuit Court of Appeal for the Ninth Circuit from the final judgment entered in this action on October 10, 1941.

JOS. MUSGROVE

Attorney for Appellants California Century Company, a California corporation and Raymond Lewis, doing business as Lewis Construction Company.

[Endorsed]: Filed Dec. 30, 1941. Mailed copy to Plf's. Atty. & to Atty. for Trustee. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy. [27]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 31 inclusive contain full, true and correct copies of Complaint; Answer of California Century Company; Answer of Lewis Construction Company; Memorandum Decision; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Bond for Costs on Appeal; Designation of Record on Appeal and Order for Transmittal of Original Exhibits, which together with the Reporter's Transcript of Testimony and the Original Exhibits constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$5.60 and that the said amount has been paid to me by Appellants.

Witness my hand and the seal of the said District Court this 11th of March, A. D. 1942.

[Seal]

R. S. ZIMMERMAN, Clerk,

By: EDMUND L. SMITH,

Deputy

[Title of District Court and Cause.]

TESTIMONY

RAYMOND LEWIS.

Direct Examination.

Q. By Mr. Hart: What is your name?

A. Raymond Lewis.

The Court: I think, Mr. Clerk, you had better swear Mr. Lewis, because while he was sworn yesterday I am not sure that was the same proceeding.

(Thereupon the witness was sworn by the clerk.)

Q. By Mr. Hart: State your full name.

A. Raymond Lewis.

Q. Are you president of the defendant California Century Company? A. Yes.

Q. Were you the president of that company during the [10] years 1939 and 1940?

A. During 1940 I was president, and I think during the whole year 1939 I was president.

Q. Were you a director during those two years?

A. Yes, I was.

Q. Are you also the president of the Amusement Enterprises, Incorporated? A. Yes.

Q. Were you president of that corporation in 1939? A. Yes.

Q. And in 1940? A. Yes.

Q. And were you a director of that corporation during those years? A. Yes.

Q. And were you a stockholder of the California Century Company? A. Yes.

(Testimony of Raymond Lewis.)

Q. How many shares do you own, at the present time?

Mr. Musgrove: I object to that as irrelevant, incompetent and immaterial.

Q. By Mr. Hart: All right. How many shares did you own on January 9, 1939?

A. Approximately 1,100, as I recall.

Q. Did you a short time prior to that own all the stock of the corporation? [11]

A. During the year 1938 I owned all but—or rather during part of that year I owned all but two shares, the way I recall it.

Q. How many shares of stock were issued by that corporation? A. 2,500 shares.

The Court: Now you are talking about the California Century Corporation.

The Witness: The California Century Corporation.

Q. By Mr. Hart: Shortly prior to the 1st of January, 1939 you owned all but two shares of the capital stock of the California Century Company?

A. No, there was a period in there some time during the latter part of 1939 that there were some 200-odd shares, I don't know the exact amount, off-hand, that were owned by N. Gibbons.

Q. I asked you about the number of shares you owned just prior to January the 1st, 1939.

A. I thought I answered that approximately 1,100 shares—wait a minute, I am wrong, pardon me—approximately 2,300 shares.

(Testimony of Raymond Lewis.)

Q. And prior to that you had hold of all but two shares, is that correct? A. That is correct.

Q. Did the California Century Company on the 9th of January, 1939 own two parcels of real property on Vermont [12] Avenue, one at the southeast corner of Second Street and Vermont Avenue, a parcel with a frontage of approximately 150 feet on Vermont, with a depth of approximately 400 feet on Second? A. Yes.

Q. Was that property improved with a dance pavilion known as the Palomar Dance Pavilion?

A. That and another building, yes.

Q. Did they also own a parcel of real property at the northeast corner of Third Street and Vermont Avenue, which adjoins the dance hall property on the south?

A. Not the dance hall property on the south. The dance hall property was on the north of the two parcels.

Q. Well, this parcel was on the south of the dance hall property; is that correct?

A. Legally it was two parcels of land instead of one parcel, adjoining the parcel where the dance hall pavilion was.

Q. Yes. And the latter parcel was used as a parking lot, was it?

A. As a parking lot and cocktail lounge and a storage building, and there is an entrance to the dance hall.

Q. Was the size of that second parcel which we

(Testimony of Raymond Lewis.)

have referred to as a parking lot parcel, or the parcel on the corner of Third and Vermont, approximately 265 feet on Vermont Avenue, by a depth of 250 feet on Third for a distance [13] of 165 feet on Vermont, and then for the northerly 100 feet of that parcel did it extend back for a depth of approximately 400 feet?

A. Your description is a little vague. The property actually was an L-shaped piece of property with the long part of the L paralleling the dance hall property.

Mr. Hart: I have a map here.

Q. Is this rough drawing approximately a description of the two parcels, the one outlined in red being the parking lot parcel and the property above being the property covered by the dance pavilion?

A. The one in red is the one you referred to as the parking lot parcel, but the parking lot also had a couple of buildings on it.

Q. Yes. A. That is correct.

Q. The frontage of the parking lot parcel then was 255 feet on Vermont Avenue, 250 feet deep on Third Street, and then for the north 100 feet of that parcel it extended from a depth ranging from 394.66 to 406.37 feet? A. Yes.

The Court: Will you mark that as an exhibit?

Mr. Hart: Yes, we offer it as Plaintiff's Exhibit 1.

The Court: Plaintiff's Exhibit 1 in evidence.

Q. By Mr. Hart: What were the improvements on the parcel we have referred to as the parking lot property? [14]

(Testimony of Raymond Lewis.)

A. There were three improvements, one on the northeast corner of the lot—it had a building approximately 100 by 100, a concrete building; on the northerly edge of the parcel it had a brick building approximately 30 feet wide and approximately 300 feet long, with an electric sign extending on the roof of the building practically the entire length, and the auto park was paved and landscaped.

Q. Did the California Century Company own any other asset at that time? That is January 9th, 1939.

A. Well, I have the date of the transfer of the other assets it had and the bill of sale for the other property.

Q. Well, I will put it this way—did the California Century Company transfer all of its assets except the parcel of real property we have referred to as the parking lot parcel to the Amusement Enterprises, Incorporated? A. When?

Q. I am asking you if they did at any time during the year 1939 transfer all of their assets except the parcel of real property designated as the parking lot parcel.

A. I haven't got the dates fresh in my mind, but they did transfer, for stock in the Amusement Enterprises, all of their assets except this so-called parking lot parcel, with the buildings on it.

Q. What did the California Century Corporation receive in exchange for that transfer?

(Testimony of Raymond Lewis.)

A. That stock in the Amusement Enterprises.
[15]

Q. How many shares?

A. Two hundred and sixty some-odd thousand shares the way I recall it.

Q. That was the same number of shares set forth in the permit issued by the Corporation Commissioner authorizing the transfer?

A. I don't know about that permit; I don't recall it; but I imagine it was the same number.

Q. That transfer was carried out pursuant to a permit you obtained from the Corporation Commissioner, was it? A. Yes.

The Court: How many shares of stock?

The Witness: I haven't got the exact number; approximately two hundred and sixty-odd thousand shares.

Q. By Mr. Hart: After that transaction the assets of the California Century Company then consisted of a block of stock in the Amusement Enterprises of approximately two hundred and sixty some odd thousand shares, and the parking lot parcel?

A. And the lease to the Amusement Enterprises on the parking lot property.

Q. And approximately when did this transaction take place?

A. The transfer—we have the papers on it. I would have to check those papers and find out the exact date.

Q. Did the California Century Company thereafter [16] transfer to you a block of stock in the Amusement Enterprises, Incorporated?

(Testimony of Raymond Lewis.)

A. That is correct.

Q. And approximately how long after the other transfer did that transfer take place?

A. That again—I have a record of it over there on the table.

Q. Well, it was within a few days?

A. Well, I am guessing, Mr. Hart. I can give you the exact date if you want to go into it.

Q. By the Court: Will you mark on this Plaintiff's Exhibit 1 the parking lot?

A. Yes, sir, I can shade it in, your Honor.

Q. What is the other that is not shaded in? What does the blue pencil part of it you have represent?

A. That is the parcel retained by the California Century Company and leased to the Amusement Enterprises.

Q. And what does the red part indicate?

A. That was the part sold to the Amusement Enterprises for stock in that corporation.

Q. The parking lot is in blue? A. Yes.

The Court: You may proceed.

The Witness: The parcel that was sold to the Amusement Enterprises, the bill of sale was made out on January the 12th, 1939. [17]

Q. By Mr. Hart: Is this the bill of sale—is this your signature? A. That is correct.

Mr. Hart: I would like to introduce this bill of sale in evidence.

The Court: Are you talking about a bill of sale to real property?

(Testimony of Raymond Lewis.)

Mr. Hart: No, this is the personal part of the transaction.

The Court: All right, Plaintiff's Exhibit 2.

PLAINTIFF'S EXHIBIT No. 2

BILL OF SALE

Corporation

Know All Men By These Presents, That

California Century Company, a Corporation duly organized and existing under and by virtue of the laws of the State of California, the party of the first part, and Amusement Enterprises, Inc., a Corporation duly organized and existing under and by virtue of the laws of the State of California, the party of the second part.

Witnesseth: That the party of the first part, for and inconsideration of the sum of Ten Dollars (\$10.00), lawful money of the United States of America, to it in hand paid by the party of the second part, the receipt wheerof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, all the hereinafter described personal property situated in and upon those certain premises known as "The Palomar", located at 3440 West Second Street, Los Angeles, California:

Furniture and Furnishings

Kitchen and Dining Room Equipment

(Testimony of Raymond Lewis.)

Dishes, Silverware and Glassware
Electrical and Mechanical Equipment
Office Appliances
Sundry Maintenance Equipment
Leasehold Improvements

(Reference is hereby made to the Appraisal Report of the Fidelity Appraisal Co., dated August 1, 1938, for a full and more detailed description of the aforementioned personal property, which said appraisal is incorporated herein by reference and made a part hereof as though herein set forth in full.)

To Have and To Hold, the same to the said party of the second part, its successors and assigns forever. And said first party does for itself, its successors and assigns, covenant and agree to and with the said party of the second part, its successors and assigns, to warrant and defend the title to the said property, goods and chattels hereby conveyed, against the just and lawful claims and demands of all persons whomsoever.

Witness the seal of the Corporation and our signatures on its behalf as its duly authorized officers this 12 day of January, 1939.

[Seal] CALIFORNIA CENTURY
COMPANY

By RAYMOND LEWIS

Its President

By FRANK TIMPSON

Its Secretary

(Testimony of Raymond Lewis.)

State of California

County of Los Angeles—ss.

On this 12th day of January, A. D., 1939, before me, F. E. Dent, a Notary Public in and for the said County and State, personally appeared Raymond Lewis, known to me to be the President, and Frank Timpson, known to me to be the Secretary of the California Century Company, the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the corporation herein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] F. E. DENT,

Notary Public in and for said County and State.

CERTIFICATE OF SECRETARY OF CALIFORNIA CENTURY COMPANY AS TO AUTHORIZATION OF CONVEYANCE OF CORPORATE ASSETS.

The undersigned, Frank Timpson, hereby certifies:

1. That he is and has been at all times herein mentioned the duly elected and acting Secretary of California Century Company, a California corporation.

(Testimony of Raymond Lewis.)

2. That at a special meeting of the Board of Directors of said corporation duly held on November 7, 1938, at 3440 West Second Street, Los Angeles, California, the following resolutions were duly adopted:

“Whereas, the Board of Directors of this corporation deems it to be for the best interests of this corporation and its shareholders that certain of its property and assets be conveyed, transferred and assigned, in accordance with Schedule ‘C’ hereto attached and made a part hereof, to Amusement Enterprises, Inc., a California corporation, in consideration for the issuance by said Amusement Enterprises, Inc. to this corporation of Two Hundred Ninety-one Thousand Seven Hundred (291,700) shares of the capital stock of said Amusement Enterprises, Inc., which shares are of the par value of One Dollar (\$1.00) each, in accordance with the above described plan of reorganization:

Now, Therefore, Be It Resolved that the above described offer of Amusement Enterprises, Inc. be, and the same is, hereby accepted and Raymond Lewis, President, is hereby authorized and directed to notify said Amusement Enterprises, Inc. of such acceptance; and

Be It Further Resolved that Raymond Lewis, President, and Frank Timpson, Secretary of this corporation, be, and they hereby are, authorized and directed to execute and deliver for and on behalf of this corporation and in its

(Testimony of Raymond Lewis.)

name such deeds, bills, or bills of sale, and/or assignments, and any other instruments and/or documents necessary or advisable in connection therewith conveying, transferring and assigning to Amusement Enterprises, Inc., a California corporation, certain of the properties and assets of this corporation described in the aforesaid Schedule 'C' simultaneously with the issuance and delivery to this corporation of the aforesaid Two Hundred Ninety-one Thousand Seven Hundred (291,700) shares of the capital stock of the said Amusement Enterprises, Inc.; and

Resolved Further, that in accordance with Section 343 of the California Civil Code, the officers of this corporation be, and they hereby are, authorized and directed to take such steps as they may deem necessary or proper to procure the approval of the principal terms of the transaction and the nature and amount of the consideration by the vote or written consent of the shareholders of this corporation entitled to exercise a majority of the voting power on the proposal to convey, transfer and assign certain of the property and assets of this corporation, as aforesaid; and

Resolved Further, that this corporation acquire from its earned surplus One Thousand One Hundred Twenty (1,120) shares of its outstanding Ten Dollar (\$10.00) par value capital stock from its shareholders in consideration

(Testimony of Raymond Lewis.)

for Two Hundred Ninety-one Thousand Seven Hundred (291,700) shares of the One Dollar (\$1.00) par value stock of Amusement Enterprises, Inc.; and

Resolved Further, that the aforesaid Two Hundred Ninety-one Thousand Seven Hundred (291,700) shares of One Dollar (\$1.00) par value capital stock of Amusement Enterprises, Inc. be delivered to the shareholders of this corporation entitled thereto upon delivery to this corporation of the aforesaid One Thousand One Hundred Twenty (1,120) shares of its Ten Dollar (\$10.00) par value capital stock, as aforesaid; and

Resolved Further, that the earned surplus of this corporation be reduced on its books and records by the sum of Twenty Thousand Seven Hundred Fifty-nine Dollars and Eighty-eight Cents (\$20,759.88); and

Resolved Further, that the aforesaid One Thousand One Hundred Twenty (1,120) shares of the outstanding Ten Dollar (\$10.00) par value stock of this corporation be carried as treasury shares, when, as and if the same shall be received by this corporation, as aforesaid."

3. That the foregoing resolutions of the Board of Directors of said corporation have been duly approved by the written consent of the shareholders of said corporation entitled to exercise a majority of the voting power on such proposal, which consent

(Testimony of Raymond Lewis.)

has been evidenced by the execution and filing with the undersigned, as Secretary of said corporation, of written consents in the form hereto attached as Exhibit "A" and made a part hereof, by shareholders holding of record Two Thousand Five Hundred (2,500) shares of said corporation entitled to exercise voting power on such proposal.

4. That Two Thousand Five Hundred (2,500) is the total number of issued and outstanding shares of said corporation entitled to exercise voting power on such proposal.

In Witness Whereof, the undersigned has executed this certificate and impressed hereon the seal of said corporation this 7th day of November, 1938.

[Seal]

FRANK TIMPSON

Secretary of California Century
Company.

SCHEDULE C

Amusement Enterprises, Inc., Transferee

SCHEDULE OF ASSETS ACQUIRED

As of October 15, 1938 from California Century Company, Transferor	
Land	
Parcel Number One of Appraisal Report by Fidelity Appraisal Co., dated August 1, 1938.....	\$ 97,600.00
Buildings	
Located on Parcel Number One Described Under Land Account	255,104.80
Building Appurtenances	
Located on Parcels Number One and Number Two of Appraisal Report by Fidelity Appraisal Co., dated August 1, 1938	74,087.05
	<hr/>
	\$426,791.85

(Testimony of Raymond Lewis.)

Less: Liens and Encumbrances

First Deed of Trust, Securing Note

Payable to Security First National

Bank of Los Angeles.....\$46,244.03

Accrued Interest 578.05 \$46,822.08

Second Deed of Trust, Securing Note

Payable to R. M. Johnson.....\$12,661.49

Accrued Interest 53.45 12,714.94

Real Property Taxes, Payable Under

Ten-year Plan\$ 1,571.59

Accrued Interest 23.57 1,595.16

Real Property Taxes for 1938-9 Fiscal
Year:

Los Angeles County Taxes on Parcel
Number One of Appraised Re-
port by Fidelity Appraisal Co.,
dated August 1, 1938.....\$ 3,289.92

Deduct Unconsumed Portion..... 2,385.19 904.73 \$ 62,036.91

\$364,754.94

Other

Contained In and Upon the Premises Known as
Parcels Number One, Two and Three of Ap-
praisal Report by Fidelity Appraisal Co.,
dated August 1, 1938 and Summarized as
Follows:

Furniture and Furnishings..... \$28,447.63

Kitchen and Dining Room Equipment..... 7,066.78

Dishes, Silverware and Glassware..... 1,815.12

Electrical and Mechanical Equipment..... 33,345.48

Office Appliances 2,527.93

Sundry Maintenance Equipment..... 404.28

Leasehold Improvements 20,373.25

\$93,980.47

Less Furniture, Fixtures, Equipment, Et Cet-
era to be Acquired from Summer Company

51,508.56 \$ 42,471.91

\$407,226.85

(Testimony of Raymond Lewis.)

EXHIBIT "A"

“WRITTEN CONSENT OF SHAREHOLDERS
TO THE CONVEYANCE OF CERTAIN OF
THE PROPERTY AND ASSETS OF CALI-
FORNIA CENTURY COMPANY.

Whereas, at a special meeting of the Board of Directors of California Century Company, a California corporation, duly held at 3440 West Second Street, in the City of Los Angeles, County of Los Angeles, State of California, on the 7th day of November, 1938, the Board of Directors of said corporation authorized the conveyance of certain of its property and assets to Amusement Enterprises, Inc., a California corporation, on the following terms and for the following consideration:

California Century Company, a California corporation, will convey, transfer and assign all its right, title, interest and equity in and to all the property and assets of the “The Palomar” business, as set forth in Schedule ‘C’ hereto attached and made a part hereof, to Amusement Enterprises, Inc., a California corporation, in consideration for Two Hundred Ninety-one Thousand Seven Hundred (291,700) shares of the One Dollar (\$1.00) par value capital stock of said Amusement Enterprises, Inc.

Now, Therefore, each of the undersigned shareholders of California Century Company does hereby approve and consent to the principal terms of the

(Testimony of Raymond Lewis.)

transaction and the nature and amount of the consideration as hereinbefore set forth.

In Witness Whereof, each of the undersigned has hereunto signed his name and following his name the date of signing and the number of shares of said corporation held of record by him on said date entitled to vote on the proposal to make such conveyance of the property and assets of said corporation.

Name	Date	Number of Shares
Raymond Lewis	Nov. 7, 1938	2498
Stanley Mitchell	Nov. 7, 1938	1
Frank Timpson	Nov. 7, 1938	1

[Endorsed]: Plf Exhibit No. 2 Filed 6/3/41

Q. By Mr. Hart: What did the California Century Company receive in exchange for the assignment and transfer to you of the shares of stock in the Amusement Enterprises, Incorporated?

A. Stock in the California Century Company.

Q. And how many shares of stock in the California Century Company did you turn over?

A. Approximately 1,120 shares.

Q. That transfer took place subsequent to the transaction wherein the California Century Company transferred certain assets to the Amusement Enterprises, Incorporated?

A. Well, I don't know the exact date. The transfer of those assets started in—they were consummated in January, 1938. Our records show—the min-

(Testimony of Raymond Lewis.)

utes of our meeting that Mr. Musgrove had, his office copy showed they started in November, 1938 and they were consummated in [18] January, 1938—1939, rather.

Mr. Hart: I move that statement be stricken. He introduced a bill of sale in evidence giving the date of the transfer.

Mr. Musgrove: The date of the bill of sale is as counsel stated, the 12th of January, but Mr. Lewis states the negotiations started prior to that time. Necessarily they must have started prior to that time.

The Court: Yes, that is as I understand it.

Q. By Mr. Hart: Now the transfer of the shares of stock in the Amusement Enterprises, Incorporated, from the California Century Company to you, took place after this transaction, didn't it?

A. You are asking me—I don't know the exact date. I think you have the date in these corporation department records you have on hand here.

Q. You don't know when the transaction took place, the transfer took place?

A. I don't know offhand, but I can refresh my memory. The lady is here with the records, so all we have to do is to look it up.

The Court: Well, let's have the records, wherever there are records, counsel.

Mr. Hart: The records of the Corporation Commissioner's file do not show this transfer. Here is the permit issued by the Corporation Department authorizing the transaction. [19] I would like to

(Testimony of Raymond Lewis.)

introduce that in evidence. We can have a copy substituted.

Mr. Musgrove: What is the date of the permit?

Mr. Hart: January 11, 1939.

The Court: How long is it?

Mr. Hart: Three pages. Will it be satisfactory to counsel to have a copy of this substituted as an exhibit?

Mr. Musgrove: Yes.

The Court: It will be received as Plaintiff's Exhibit 3.

PLAINTIFF'S EXHIBIT No. 3

Before the Department of Investment, Division of
Corporations of the State of California.

File No. 68879LA

Receipt No. LA 3144

“ “ LA 3969

In the matter of the application of

“AMUSEMENT ENTERPRISES, INC.”

for a permit authorizing it to sell and issue its
securities

PERMIT.

This Permit Does Not Constitute a Recommendation
or Endorsement of the Securities Permitted to
be Issued, but is Permissive Only.

This permit is issued upon the following express
conditions:

(Testimony of Raymond Lewis.)

(a) That a true copy of this permit be given to the subscriber prior to the taking of subscriptions.

(b) That unless revoked, suspended, or renewed upon application filed on or before the date of expiration specified in this condition, this permit and all authority to sell and issue securities hereunder, shall terminate and expire on the 10th day of July, 1939.

“Amusement Enterprises, Inc.” is a California corporation incorporated on or about October 17, 1938, with an authorized stock structure consisting of 500,000 shares of the par value of \$1.00 each, all of which shares are of the same class, and none of which as of this date appear to have been issued.

Applicant has its principal office at 3440 West Second Street, Los Angeles, California, and was organized for the purpose of acquiring certain assets including real property and to thereafter engage in the business of operating a ball room and restaurant known as “The Palomar.” In addition, applicant has executed a lease for adjoining property, which lease runs for a term of thirty years commencing November 7, 1938, and calls for a total rental of \$450,000.00, payable in monthly installments of \$1,250.00 each. The leased property is calculated to provide parking facilities for applicant’s patrons.

The financial statements submitted, after giving

(Testimony of Raymond Lewis.)

effect to the issuance of shares authorized in issuance paragraph 1 hereof, and an appraisal filed with this Division, indicate that as of October 15, 1938, under these circumstances, the applicant would have gross tangible assets of \$517,913.74, subject to liabilities of \$125,547.01, and intangible assets of \$32,160.12, with 309,000 shares issued and outstanding.

As further consideration for certain of the assets applicant will acquire, in addition to certain of its shares herein authorized to be issued, applicant proposes to execute an unsecured promissory note in the principal sum of \$26,306.04, payable October 15, 1940. The liabilities hereinabove referred to, include said promissory note.

Funds received from the sale of shares herein authorized to be sold for cash will be used by applicant to reduce current accounts payable.

"Amusement Enterprises, Inc." is hereby authorized to sell and issue its securities as hereinbelow set forth:

1. To sell and issue to California Century Company, a California corporation, and Summer Company, a California corporation, or to either of them, an aggregate of not to exceed 309,000 of its shares, as consideration for the business and assets described in the application filed December 21, 1938, first to be assigned, transferred and conveyed to applicant, subject

(Testimony of Raymond Lewis.)

to the assumption by applicant of liabilities not to exceed in the aggregate the sum of \$125,-547.01, together with additional liabilities incurred in the ordinary course of business since October 15, 1938, for the uses and purposes recited in said application and the papers filed in connection therewith.

2. Thereafter and subsequent to the sale and issuance of all the shares authorized to be sold and issued under issuance paragraph 1 hereof, in the manner therein recited, to sell and issue an aggregate of not to exceed 25,000 of its shares, at and for the price of \$1.25 per share, cash, lawful money of the United States, for the uses and purposes recited in its application and the papers filed in connection therewith, subject to an aggregate selling expense of not to exceed 20 per cent of the amount received in cash on account of the selling price, including commissions payable only to duly licensed brokers or agents.

This permit is issued upon the following additional condition:

(c) That all subscriptions for any of the shares authorized by paragraph 2 hereof shall be taken upon subscription blanks of a form to be first submitted to and approved by the Commissioner of Corporations, and that this permit shall be printed in full upon said subscription blanks.

(Testimony of Raymond Lewis.)

Dated: Los Angeles, California

January 11, 1939.

EDWIN M. DAUGHERTY

Commissioner of Corporations

By J. A. HAHN

Deputy.

PMW:FS

[Endorsed]: Plf. Exhibit No. 3. Filed 6/3/41.

Mr. Musgrove: May I suggest, Mr. Clerk, this is a State record and we will have a copy made of it, so we will not be taking the State's records.

The Court: Let's have the date of the permit.

Mr. Hart: January 11, 1939.

The Court: As I understand it this permit authorized the Amusement Enterprises to transfer the shares of stock——

Mr. Hart: Your Honor, the permit authorizes the issuance of 309,000 shares to the Amusement Enterprises, Incorporated, and the Summer Company, and the application designates——

The Court: Just a moment, I want that straight.

Mr. Hart: The permit reads as follows——

The Court: The permit is issued to what corporation?

Mr. Hart: The Amusement Enterprises, and authorizes, as set forth: [20]

“1. To sell and issue to California Century

(Testimony of Raymond Lewis.)

Company, a California corporation, and Summer Company, a California corporation, or to either of them, an aggregate of not to exceed 309,000 of its shares, as consideration for the business and assets described in the application filed December 21, 1938, first to be assigned, transferred and conveyed to applicant, subject to the assumption by applicant of liabilities not to exceed in the aggregate the sum of \$125,547.01, together with additional liabilities incurred in the ordinary course of business since October 15, 1938, for the uses and purposes recited in said application and the papers filed in connection therewith."

Now if we go back to the application, we find—which application I would like also to introduce in evidence—we find the exact number of shares—

Q. Mr. Lewis, is that your signature?

A. Yes.

Mr. Hart: I would like to introduce in evidence also the application for that permit, signed by the Amusement Enterprises, Incorporated, by Raymond Lewis, president, and point out that in the application it is designated that 291,700 shares of the stock should go to the California Century Company—I will read that portion of the application.

"Applicant proposes to issue its said Three Hundred Nine Thousand (309,000) shares to said corporations in the [21] following proportions: California Century Company—Two Hundred Ninety-one Thousand Seven Hundred

(Testimony of Raymond Lewis.)

(291,700) shares; and Summer Company—
—Seventeen Thousand Three Hundred (17,300)
shares.”

The Court: The signature the witness just identified is the signature attached to the application.

Mr. Hart: Yes.

Mr. Musgrove: We will stipulate to that, the signature of the Amusement Enterprises, Incorporated, by Raymond Lewis, president.

The Court: And it is dated when?

Mr. Hart: The application is dated—it is filed December 21, 1938.

The Court: Plaintiff's Exhibit 4. You will file a photostatic copy?

Mr. Hart: Yes, we will file a copy of it in lieu of the original.

Q. Now, after the transactions that you have mentioned, it left the California Century Company with the parking lot as its sole asset?

A. The parking lot parcel, do you mean, Mr. Hart?

Q. Yes. A. Yes.

Q. What was the income of the California Century Company? A. \$1,250 a month. [22]

Q. That was the only income that it had?

A. I don't recall of any other income.

Q. Was that the rental on the lease of the parking lot? A. That is correct.

Q. How many shares of stock in the California Century Company——

(Testimony of Raymond Lewis.)

The Witness: Pardon me, may I interrupt a minute—you said that these transactions took place, this particular lease was signed November 30, 1938.

Q. Well, that is consistent, I believe, with your statement.

A. What do you mean by consistent with my statement?

The Court: Your answer was that the only asset the California Century Company had after the transfer was the lease on the parking lot, which income amounted to \$1,250 a month.

The Witness: Yes.

The Court: Proceed, counsel,—and then the witness added the fact that the lease was dated November 5, 1938.

Q. By Mr. Hart: How many shares of stock in the California Century Company did you have immediately after the transaction with the California Century Company, in which you acquired two hundred and sixty-odd thousand shares of the Amusement Enterprises, Incorporated stock?

A. I haven't got the date down every time in my mind, [23] what date that took place.

Q. Well, after the transaction in which you transferred to the California Century Company 1,190 shares I believe you said of its stock in exchange for stock of the Amusement Enterprises, Incorporated, how many shares did you have? How many shares of the California Century Company?

(Testimony of Raymond Lewis.)

Mr. Musgrove: How many shares of the California Century Company stock he had left, do you mean?

Q. By Mr. Hart: Yes, how many shares did you have left?

A. Approximately 1,100, the way I recall, but I am guessing.

Q. Did you reacquire any of the stock from the California Century Company after that time?

A. Well, the way I recall I reacquired Mr. Givens'; he had a couple of hundred shares of that stock before this transfer took place—the stock he held. Now what date that took place I don't recall offhand.

Q. Then you had a total of approximately 1,300 shares of stock in the California Century Company during that period in there?

A. It was between 1,100 and 1,300. When that 200 shares was transferred I don't recall.

Q. You never reacquired the stock that was transferred to the California Century Company?

A. No, no, that has never been reacquired. [24]

Q. Is this your signature?

A. That is correct.

The Court: Showing the witness his signature on what?

Q. By Mr. Hart: I show you your statment of assets and liabilities, filed in the bankruptcy proceeding of Raymond Lewis, doing business as Lewis Construction Company, and ask you whether this

(Testimony of Raymond Lewis.)

is your signature at the bottom of the schedule there.

A. That is my signature.

The Court: What is the date of that?

Mr. Hart: This is April 29, 1940, the schedule of assets.

Q. And you signed this before a notary public?

A. Yes, I suppose you are referring to where I signed that I owned 2,500 shares, and I explained it to Mr. Sampsell, the receiver——

The Court: Just a minute, witness, just answer the question.

A. Yes, I signed it before a notary.

Q. By Mr. Hart: In this statement you show you own 2,500 shares of California Century stock?

A. I made a mistake in putting the figures down. In other words that statement was drawn up in Mr. Granger's office, the attorney, very hurriedly one afternoon when I had none of my records in front of me, and we left out a few items and put in a few items that had been disposed of [25] previously, and it was all explained.

Q. Nevertheless you swore to this signature?

A. My signature is on there, which was sworn to before a notary public, yes.

Mr. Hart: I would like to introduce this schedule in evidence.

Mr. Musgrove: May it be considered in evidence by reference instead of copying the entire record?

The Court: It may be received by reference.

(Testimony of Raymond Lewis.)

PLAINTIFFS' EXHIBIT No. 5

In the United States Circuit Court of Appeals for
the Ninth *District*.

Case No. 10084

CALIFORNIA CENTURY CORPORATION, a
California corporation, RAYMOND LEWIS, do-
ing business as Lewis Construction Company, and
PAUL W. SAMPSELL, Trustee of the Estate of
Raymond Lewis, Debtor, a Bankrupt,
Appellants,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS
ANGELES, a national banking association,
Appellee.

STIPULATION

It Is Hereby Stipulated by and between the ap-
pellant, California Century Corporation and the
appellant, Raymond Lewis, doing business as Lewis
Construction Company, and the appellee, Security-
First National Bank of Los Angeles, a national
banking association, by and through their respec-
tive counsels herein, that in lieu of the entire Ex-
hibit referred to in the transcript of testimony and
proceedings on file herein as plaintiff's Exhibit No.
5, being the schedule of assets and liabilities filed
in bankruptcy proceedings No. 36226-C by appel-
lant, Raymond Lewis, doing business as Lewis Con-

(Testimony of Raymond Lewis.)

struction Company, the transcript on appeal herein shall include only the following portions of said Exhibit, as follows:

SCHEDULE A—STATEMENT OF ALL
DEBTS OF BANKRUPT

Schedule A-3 Creditors Whose Claims are un-
secured

Amusement Enterprises, Inc., 214 South Vermont Avenue, Ap. \$55,000.00. (In the event of a liquidation of the above corporation sums owing by this debtor to it are to be paid out of sums accruing on any stock held by the debtor.)

Oath to Schedule A

State of California,
County of Los Angeles—ss.

I, Raymond Lewis, the person who subscribed to the foregoing schedule do hereby make solemn oath that the schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information and belief.

RAYMOND LEWIS

Petitioner.

Subscribed and sworn to before me this 29th day of April, 1940.

ADELE O. CARVER,

Notary Public in and for the County of Los Angeles, State of California.

(Testimony of Raymond Lewis.)

SCHEDULE B—STATEMENT OF ALL PROPERTY
PERSONAL PROPERTY

Schedule B-2—Negotiable and non-negotiable instruments of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately).

268,132 shares of the capital stock of Amusement Enterprises, Inc.—par value \$1.00 per share	\$536,264.00
2500 shares of the capital stock of Summer Company	No Value
2500 shares of the capital stock of California Century Company	No Value

* * * * *

Oath to Schedule B

State of California,
County of Los Angeles—ss.

I, Raymond Lewis, the person who subscribed to the foregoing schedule hereby make solemn oath that the schedule is a statement of all my property, real and *persona*, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information and belief.

RAYMOND LEWIS
Petitioner.

Subscribed and sworn to before me this 29th day of April, 1940.

ADELE O. CARVER,
Notary Public in and for the County of Los Angeles, State of California.

(Testimony of Raymond Lewis.)

JOS. MUSGROVE

Attorneys for Appellants.

HELGOE and HART

By HOWARD W. HART

Attorneys for Appellee.

[Endorsed]: Filed March 13, 1942. Paul P. O'Brien, Clerk.

Mr. Musgrove: May I refer to that, because it is in No. 36226-C of the United States District Court, Southern Division, District of California, Southern Division, in the matter of Raymond Lewis and so forth, bankruptcy? [26]

Cross Examination

Q. By Mr. Musgrove: Mr. Lewis, at the time of this transaction, was there a lease on this property? A. Yes, there was.

Q. And you have some documents before you?

A. I have the lease here between the Amusement Enterprises and the California Century Company for the lease on the so-called auto park property.

Q. That covers the property described in Plaintiff's Exhibit 1 under the red lines?

A. That is correct.

Q. After the execution of this lease, did the Amusement Enterprises Corporation, or Incorporated, perform the terms of the lease up until October, the time of the fire? A. They did.

(Testimony of Raymond Lewis.)

Q. The Amusement Enterprises had its fire on October 1st or 2, 1939?

A. I think October 1, 1939.

Q. In which their property was destroyed?

A. In which the property was practically totally destroyed on the parcel that is marked blue—pardon me, the parcel marked red. [28]

Q. On Plaintiff's Exhibit 1? A. Yes.

Q. And after this transfer to the Amusement Enterprises, Incorporated, of the property known as the dance hall, what property did the California Century Company have left?

A. They had the property that is marked in blue on Plaintiff's Exhibit 1.

Q. And that consisted of what?

A. That consisted of two buildings, one approximately 300 by 30, and another building approximately 100 by 100, and a paved auto park covering approximately an acre and a half, and a sign on top of these buildings, and whatever fixtures that were attached to the buildings as part of the buildings.

The Court: Could you describe the dimensions of the first lot? A. Approximately 300 by 30.

The Court: The building I mean.

The Witness: Yes, sir.

Q. By Mr. Musgrove: What was that used for?

A. The Vermont front of the long building was used as a cocktail lounge, and farther back it was used as rest rooms, waiting rooms, check rooms, and

(Testimony of Raymond Lewis.)

our ticket seller and the entrance was in that building; and the back building, which was approximately 100 by 100, was used as a storage [29] room and was used as an auxiliary dining room.

Q. When did these negotiations with the Amusement Enterprises, Incorporated, start?

A. Well, the occasion of them——

Q. When?

A. They started in approximately October, 1938, when we made a deal with a brokerage house on Spring Street for the refinancing of our business, and in that deal we formed another corporation, and consolidated, or bought some assets from the California Century Company.

Q. That was when the Amusement Enterprises was formed?

A. Yes, in 1938. The way I recall it, it was approximately October, 1938.

Q. And that took over part of the California Century Company?

A. That took over part of the California Century Company, yes.

Q. In consideration of the stock of this new company?

A. That is correct.

Mr. Musgrove: May we have this lease marked an exhibit for the defendant?

The Court: Defendants' Exhibit A. That is the lease that is dated November 7, 1938, from the California Century Company to the Amusement Enterprises. [30]

ROBERT BAKER,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Q. By the Clerk: What is your name?

A. Robert Baker.

Direct Examination

Q. By Mr. Hart: Mr. Baker, what is your business?

A. I am a real estate broker and appraiser.

Q. How long have you been in that business?

A. 39 years, of which the last 27 years was in Los Angeles.

Q. During your experience as a real estate broker, have you ever appraised business properties in the City of Los Angeles?

A. I have, yes.

Q. Would you name some of the companies for whom you have acted as an appraiser?

Mr. Musgrove: Objected to as incompetent. I will stipulate Mr. Baker is a real estate man.

The Court: You admit his qualifications as an expert?

Mr. Musgrove: Yes.

The Court: Proceed with your questions.

Q. By Mr. Hart: Are you familiar with the property located on the east side of Vermont Avenue between Second and Third Streets in the City of Los Angeles? [31]

A. I am.

Q. Are you familiar with the market prices of similar property in the neighborhood?

(Testimony of Robert Baker.)

A. I am.

Q. From your knowledge of this property, have you formed an opinion as to the fair market value of that parcel we have referred to as the parking lot parcel, being a parcel of land with a frontage of 265 feet on Vermont Avenue, the southerly 165 feet of which has a depth of 250 feet on Third Street and the northerly 100 feet of which has a depth of 394.66 feet to 406.97 feet? A. I have.

The Court: And marked in blue on Plaintiff's Exhibit 1?

A. Yes.

Q. By Mr. Hart: What in your opinion was the reasonable market value or fair market value of that property on the 9th of January, 1939?

Mr. Musgrove: I object to that as incompetent, irrelevant and immaterial on the ground the value of that property on the 9th of January, 1939, is not material to the issues of this case. If it had a great value it would not affect the issues of this case. This is fraud—based on the theory there was a fraud of the creditors and alleges the Security Bank was a creditor to the extent of less than \$1,000, and that they entered into a lease on January 9, 1939. There is no other creditor involved, just a \$1,000 creditor, and also the record now shows that there were certain transactions between [32] the California Century Company and the Amusement Enterprises, Incorporated, whereby certain portions of their prop-

(Testimony of Robert Baker.)

erty were transferred. Also the record shows certain properties were retained by the California Century Company. Also the record shows the California Century Company retained a lease in which there was a payment of \$1,250 per month for the use of a parking lot. The issues in this case involve \$1,000. As to the value of that property at that time I cannot see how it could aid the court or how it is material or competent to the issues involved in this action. And I therefore object to it.

(Argument.)

Mr. Hart: Your Honor, I will develop facts later on which show clearly, if counsel wishes me to, that this property was covered by claims and debts, which makes it very material what the value of the property was. This witness is out of order at this time, your Honor.

The Court: At this time I will overrule the objection.

A. In my opinion the market value of that property at that time, January 9, 1939, was \$74,500.

Q. By Mr. Hart: Is your opinion based on the fair market value of that property free from encumbrances? A. Yes, sir.

Q. And if there were bond assessments or encumbrances against the property, you would reduce the appraisal accordingly. Is that correct? [33]

A. Yes.

Mr. Hart: That is all.

(Testimony of Robert Baker.)

Cross Examination [34]

Q. Now for a similar piece of property on the southeast corner the value would be just the same, wouldn't it?

A. The value would be the same, but you could purchase it for considerably less.

Q. You could purchase it cheaper?

A. Yes.

Q. But you still had the same value for the same size piece of property. Is that true? A. Yes.

Q. By the Court: You started to say something about filled-in ground.

A. The southeast corner probably has more filled-in ground than the northeast corner has.

Q. By Mr. Musgrove: Mr. Baker, did you consider this property was zoned when you appraised it last Saturday?

A. It was zoned for business, yes, sir.

Q. You considered it zoned for business?

A. Yes, sir.

Q. Did you consider it zoned for any other purpose?

A. In a general way I know it has been zoned for amusements. [38]

Q. What is that?

A. I say it has been zoned for amusements.

Q. Did you consider that in the value or appraisal you made?

(Testimony of Robert Baker.)

A. Naturally. I took everything into consideration.

Q. What did you consider—did it detract from its value, the fact that it was zoned for amusements, or increase its value?

A. It increased its value.

Q. How much? A. Oh, that is hard to say.

Q. How much did you figure in your appraisal?

A. Well——

Q. Don't you know?

A. Probably about 20 per cent more.

Q. Well, what did you figure? You didn't give it a thought, did you?

A. Yes, I did give it some thought.

Q. What did you figure?

A. Naturally I haven't told you, Mr. Musgrove, that I appraised it for more money because I took into consideration they had a dance hall there and it could be used for a parking lot while the southeast corner couldn't. Naturally that would make the northeast corner more valuable than the southeast.

Q. Don't you know, Mr. Baker, from your experience, [39] that the fact that it was zoned for amusement enterprises, that it did increase the value materially?

A. I wouldn't say materially. It increased the value.

Q. For amusement purposes? A. Yes.

Q. And that is true of that entire block, of which the Palomar was a part?

A. That is true.

REGINALD J. CROMIE,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Q. By the Clerk: What is your name?

A. Reginald J. Cromie.

Direct Examination

Q. By Mr. Hart: Mr. Cromie, what is your official position?

A. Deputy County tax collector.

Q. Pursuant to subpoena issued by this court, have you produced a record showing the status of taxes against the property described in Plaintiff's Exhibit 1, and marked with a blue pencil, being the property at the northeast corner of Vermont and Third shown on this plat? A. Yes, I have.

Q. Would you state to the court whether the taxes for the years 1938 and 1939 were paid when due?

Mr. Musgrove: Objected to as incompetent, irrelevant and immaterial.

Q. By Mr. Hart: I will ask this question. When was the second installment of taxes for the fiscal years 1938-1939, due?

A. They were due January 20, 1939.

Q. Was the tax assessment against this property for the second installment in 1938-1939 paid when due? [43]

Mr. Musgrove: Objected to as incompetent, irrelevant and immaterial.

(Testimony of Reginald J. Cromie.)

The Court: That is on the same ground as the other objection?

Mr. Musgrove: Yes.

The Court: Objection overruled.

A. No, they were not.

Mr. Musgrove: May I amplify that—this is January 20, 1939, which is subsequent, if the court please, to the transaction involed.

The Court: Yes, I understand.

Q. By Mr. Hart: Was that tax assessment paid at any time prior to the delinquency date, April 20, 1939? A. No, it was not.

Q. Will you give us the amount of the taxes?

A. For the second installment, the one that went delinquent, the total amount of those was \$1,544.79.

Q. By the Court: Now that item of \$1,544.79 applied to what period of taxation?

A. That was from January 1, 1939, to June 30, 1939.

Q. And you call that the second installment?

A. Yes, our fiscal year is from July 1st to June 30th, and the second installment becomes due in January and takes up to June 30th of the same year.

The Court: That is all. [44]

Cross Examination

Q. By Mr. Musgrove: That second installment became due on the 20th day of January, 1939?

A. That is correct.

Q. And the taxes were a lien on the property?

(Testimony of Reginald J. Cromie.)

A. They were.

Q. And the property secured the payment thereof? A. That is correct.

Mr. Musgrove: That is all. [45]

RAYMOND LEWIS

recalled.

Direct Examination

Q. By Mr. Hart: Mr. Lewis, referring to the parcel of real property which we mentioned as the parking lot parcel, the parcel marked in blue, was that property covered by a trust deed to the Bank of America? A. That is correct.

Q. And what was the amount of the loan due to the Bank of America? A. When?

Q. On the 9th of January, 1939.

A. I don't recall the amount. [46]

The Court: Is there such a difference, Mr. Hart, that you will want to get the exact figure?

Mr. Hart: Yes.

The Court: Is the point you want to urge that the income was not sufficient to pay the taxes and interest and the bond issue obligations as they became due?

Mr. Hart: That is right, I want to show the obligations were such that I am satisfied the company didn't have the income to pay those obligations as they came due.

(Testimony of Raymond Lewis.)

The Court: Have you any information about that, Mr. Lewis?

The Witness: Yes, I get his point. I was just trying to go through in my own mind the facts about it.

The Court: Just take your time about it.

The Witness: I know at the time when that point came up we discussed the point of the income, the amount of income necessary, and I know we were satisfied at that time that we had sufficient income to take care of those things, because it would have been just as easy for us to make a lease—or rather it was within my power to make a lease for 13 or \$1,400, or whatever was necessary to cover it. But I can't recall offhand what the expenses were.

Q. By the Court: How do you account for the fact that the taxes became delinquent and were not paid and went to penalty? [49]

A. I don't recall that. I have had that occur before in other lines of business, and we paid them up. It might have been an oversight, or quite a few things might have happened.

Q. You say it was within your power to set the figures on this lease. Do you mean you had control of both corporations?

A. No, I don't mean that. I mean if it was necessary to get a higher rent I could have influenced the other people that were involved, or I, rather, could have refused to rent it for \$1,250 a month, if it wasn't sufficient.

The Court: Is that all, gentlemen?

Mr. Hart: That is all. [50]

JAMES W. HOWARD,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Q. By the Clerk: What is your name?

A. James W. Howard.

Direct Examination

Q. By Mr. Hart: What is your official position, Mr. Howard?

A. Supervisor of the street bonds department of the City Treasury.

Q. Pursuant to subpoena out of this court have you produced the records of your office showing the opening and widening street bonds for improvement of Third Street, against the property located at the northeast corner of Third Street and Vermont Avenue, which would be the property set forth in Plaintiff's Exhibit 1 referred to as the parking lot parcel, and marked in blue pencil? A. Yes.

Q. Would you state to the court the unpaid principal balance of bonds against that property on the 9th of January, 1939?

A. Of all bonds?

Q. Well, all bonds for the opening and widening of Third Street will be sufficient.

A. Your question again? [51]

Q. What was the unpaid principal balance of the bonds against that property on or about the 9th of January, 1939?

A. I will have to figure that.

(Testimony of James W. Howard.)

Q. I just want the principal balance.

A. I will still have to figure it—\$14,181.30.

Q. That covers all the opening and widening bonds?

A. That is the opening bonds we are speaking about now—that is Bond 791.

Q. Was there any other bond, opening and widening bond? A. Against which?

Q. Against the southern portion of Lot 8 set forth in this plat? A. And lot 9?

Q. And this portion of Lot 9 (indicating).

A. Yes, there is another bond that covers a portion of Lot 9.

Q. Do you have to turn to another page to get that? A. Yes.

Q. Well, will you—I will ask you this—what were the installments delinquent, if any, on that bond issue, in January, 1939?

A. In January, 1939 there was one payment of principal \$709.07 that was delinquent from July 1, 1938.

Q. Was there also interest on that?

A. Interest of \$1,042.32.

Q. Then the total delinquency was—— [52]

A. \$1,751.39.

Q. Was the installment on that bond that became due January 1, 1939 paid when due?

A. No, that wasn't paid till September 14, 1939.

Q. Do you know who paid it at that time?

A. The only way I can tell you that would be

(Testimony of James W. Howard.)

to get further records from the City Treasurer's office.

Q. All right, will you go to the other bond? What was the unpaid principal balance on that bond in January, 1939? A. \$3,890.95.

Q. Were there any delinquencies on that bond at that time, any delinquent installments?

A. That is as of January, 1939. Is that right?

A. That is right.

A. The bond had been delinquent—that being a 10-year bond, it matured July 1, 1938, and as of January, 1939 it was delinquent on the principal payment from July 1, 1934, and the interest payment from July 1, 1937.

Q. Could you tell us approximately what the delinquencies amounted to in January, 1939, without too much computation? A. \$4,054.31.

Mr. Hart: That is all. [53]

Cross Examination

Q. By Mr. Musgrove: That includes the principal and interest that was due—that is the total?

A. Yes.

Mr. Musgrove: That is all. [54]

WARREN V. GLASS,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Q. By the Clerk: What is your name?

A. Warren V. Glass.

(Testimony of Warren V. Glass.)

Direct Examination

Q. By Mr. Hart: What is your occupation?

A. I am assistant cashier of the Bank of America.

Q. And pursuant to subpoena, do you have with you a note executed by the California Century Company to the Bank of America?

A. I have.

Q. And is this note secured by a deed of trust on the property on the northeast corner of Third and Vermont?

A. Yes.

Q. I would like to ask you what were the installments on this note?

A. \$750 a month, plus interest beginning April 1st.

Q. Was the installment on the note due January 1, 1939 paid when due?

A. January 1, 1939 was paid January 24, 1939.

Q. Was the installment due February 1, 1939 paid when due?

A. That was paid February 25, 1939.

Q. What about the installment due March 1, 1939? [55]

Mr. Musgrove: I object to that as incompetent, irrelevant and immaterial as to any future payments subsequent to January. How is it material, Mr. Hart?

Mr. Hart: To show whether the company was rendered insolvent. I would like to introduce this in evidence. Do you have any objection?

Mr. Musgrove: I stipulated to it.

(Testimony of Warren V. Glass.)

Mr. Hart: It is dated October 30, 1938 and the principal amount is \$116,420.73.

Q. What was the unpaid principal balance on that note in January, 1939?

A. What day in January?

Q. Give us the date of January 1st, and then the date of February 1st.

A. Of January 1st the balance was \$110,427.73.

Q. Then on February 1, 1939 what was it?

A. \$108,920.73.

Mr. Hart: Do you have any objection to introducing a copy of this in lieu of the original note?

Mr. Musgrove: No, I have no objection.

The Court: It is so ordered. Plaintiff's Exhibit 6.

PLAINTIFF'S EXHIBIT No. 6

Loan Transferred from S. F. Hdqts. 916

California Century Company

3440 W. 2nd St., L. A.

Corporation Instalment Real Estate Note

(Principal Payable in Installments—

Interest Separately)

\$116,420.73

Los Angeles, California, October 6, 1938

For value received, California Century Company, a corporation promises to pay in lawful money of the United States of America, to the order of the Bank of America (National Trust and Savings Association) at its Los Angeles Main Branch in this city the principal sum of One Hundred Sixteen Thousand

(Testimony of Warren V. Glass.)

Four Hundred Twenty and 73/100 Dollars, with interest payable monthly in like lawful money from April 1, 1938 on deferred balances until paid at the rate of five per cent per annum; and said principal sum payable as follows: Seven Hundred Fifty and no/100 Dollars, (\$750.00), on the first day of April 1938, and seven hundred fifty and no/100 Dollars, (\$750.00), on the first day of each and every month thereafter until the 15th day of September, 1947, on which said date the entire balance of principal and interest then unpaid shall become due and payable.

If the interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or instalment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

A Deed of Trust of even date secures the indebtedness evidenced by this note.

In witness whereof, the said Corporation has caused this note to be executed by its officers thereunto duly authorized and directed by a resolution of its Board of Directors duly passed and adopted by a majority of said Board at a meeting thereof duly called, noticed, and held.

CALIFORNIA CENTURY COMPANY
a Corporation

By JOSEPH MUSGROVE

President

By FRANK TIMPSON

Secretary

(Testimony of Warren V. Glass.)

		Interest Paid		Paid on Account of Principal		
	Date	Amount	Paid to	Date	Amount	Balance
			4-1-38	4-14-38	750	115,670.73
Pmts. trans- ferred from old notes 1-17-39	5- 9-38	483.32	5-1-38	5- 9-38	750	114,920.73
	6-13-38	479.67	6-1-38	6-13-38	750	114,170.73
	7-16-38	476.96	7-1-38		750	113,420.73
	8-20-38	474.15	8-1-38		750	112,670.73
	9-20-38	471.44	9-1-38		750	111,920.73
	10-18-38	468.31	10-1-38		750	111,170.73
	11-23-38	464.98	11-1-38		750	110,420.73
	1- 6-39	462.38	12-1-38		750	109,670.73
	1-24-39	460.09	1-1-39		750	108,920.73
	2-25-39	456.75	2-1-39		750	108,170.73
	5-12-39	453.21	3-1-39		750	107,420.73
	5-12-39	3.54	a/c			
	5-31-39	447.17	4-1-39		750	106,670.73
	6-26-39	450.77	5-1-39		750	105,920.73
	7-22-39	325.	a/c	8-19-39	296.09	105,624.64
	7-29-39	123.63	6-1-39			
	7-29-39	201.37	a/c			
	8- 7-39	242.57	7-1-39			
	8- 7-39	82.43	a/c			
	8-14-39	325.	a/c			
	8-19-39	28.91	a/c			
	9- 1-39	5.	8-1-39			
	9- 1-39	320.	a/c			
	9- 8-39	297.16	9-1-39	9- 8-39	27.84	105,596.80
				9-14-39	325. *	105,271.80
				9-25-39†	325 †	105,596.80

*N S F written in margin in red ink.

†Indicates red figures.

For Value Received, I hereby guarantee payment of the within obligation and all renewals or extensions thereof, and all taxes and insurance premiums and any other sums that may become due and payable under and by virtue of the provisions of the

(Testimony of Warren V. Glass.)

Deed of Trust (or Mortgage) securing the afore-said note, and I hereby waive presentation, demand, protest, notice of protest and notice of non-payment.

[Endorsed]: Plf. Exhibit No. 6. Filed 6/3/41.

Q. By Mr. Hart: Do your records show the amount you sold this property to the California Century Company for?

A. No, these records are a renewal of the original papers.

Q. Did you subsequently foreclose the trust deed? [56] A. Yes.

Q. When was that?

Mr. Musgrove: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Hart: That is all.

Cross Examination

Q. By Mr. Musgrove: Mr. Glass, I notice you credit payments of \$750 a month; was also the interest credited?

A. Yes, the interest is in this column (indicating). The payments were made right straight across.

Q. This note of October 6, 1938 is a renewal note of some prior obligation?

A. Yes, it was a renewal of a note dated the

(Testimony of Warren V. Glass.)

same date, October 6, 1938—no, wait a minute—no, September 1, 1937, a renewal of that one.

Q. And you don't remember the amount of that?

A. That was the same amount \$116,420.73.

Mr. Musgrove: That is all.

Redirect Examination

Q. By Mr. Hart: Do your records show the payments on that old note, the note you held before in lieu of this one?

A. Yes, our liability card shows that.

Q. What were the payments on that note; what were the [57] payments called for by the note?

A. The payments called for on the original note——

Mr. Musgrove: Do you mean the note of 1937?

Mr. Hart: Yes, the note of which this was a renewal, the previous note.

Mr. Musgrove: Objected to as incompetent, irrelevant and immaterial.

Mr. Hart: I think I can show the company was insolvent even before.

Mr. Musgrove: We have only one insolvency in issue here.

The Court: Let him answer.

Q. By Mr. Hart: What were the payments on the old note?

Mr. Musgrove: Did your Honor rule on the objection?

The Court: Overruled. Let him answer.

A. \$10,000, or more, on the 1st day of March,

(Testimony of Warren V. Glass.)

1938; \$6,500 or more on or before June 15, 1938; \$7,000 or more on or before March 15, 1939; and \$7,000 or more on the 15th day of each and every month until September 15, 1947.

Q. By Mr. Hart: Those were the installments due on the principal? A. Yes.

Q. Were any of those payments made?

A. No. [58]

RAYMOND LEWIS,

recalled as a witness on behalf of the defendant, testified further as follows:

Direct Examination

Q. By Mr. Musgrove: Mr. Lewis, I think on your examination this morning you described this particular property shown by Plaintiff's Exhibit A, or Exhibit 1; now that part shown upon Plaintiff's Exhibit 1 in red was known as what? Did it have a name?

A. It had a dance hall on it and restaurant.

Q. It was known as the Palomar Dance Hall?

A. That is correct.

Q. And about how much of that portion marked blue was the portion of the dance hall?

A. Oh, an area I would say——

Q. About how wide, Mr. Lewis?

A. Well, 30 by 300 approximately.

(Testimony of Raymond Lewis.)

Q. It went along the whole length of the dance hall?

A. Yes, and then another building approximately 100 by 100.

Q. Now in November, 1938, did the Amusement Enterprises and the California Century Company enter into an agreement as to the purchase and sale of certain of their property? A. They did.

Q. And that agreement covered what property? [62]

A. That covered the property marked in red on Plaintiff's Exhibit 1, and they entered into an agreement for the lease of the part of the property marked in blue.

Q. Now did you have an appraisement of that property made, Mr. Lewis?

A. Yes, we had an appraisal made at that time.

Q. I show you a book. Will you explain what that is?

A. We hired an outside appraisal company to make an appraisal of the building and the real estate and the equipment.

Q. Upon what date was that appraisal made?

A. August 1, 1938.

Q. And how did the value of the property compare on the 9th day of January, 1939 with the value of August, 1938?

A. There would be no change in the value.

Mr. Hart: If you are testifying to what the appraiser stated—is that what you are testifying?

(Testimony of Raymond Lewis.)

The Witness: I am testifying to my own knowledge right now, that there was no change in the valuation.

Q. By Mr. Musgrove: Who employed these appraisers? A. The Summer Company.

Q. The Summer Company was the operating company?

A. The Summer Company was the operating company of the business known as the Palomar Dance Hall.

Q. And the California Century Company held the fee title to the property?

A. That is correct. [63]

Q. And you were also president of the Summer Company? A. That is correct.

Q. And do you know what the value of that portion of the property marked in blue on Plaintiff's Exhibit 1 was on the 9th day of January, 1939?

A. My own estimation of the value?

Q. Yes, as president of the California Century Company? A. Yes, I do.

Mr. Hart: I want to object to the question on the ground that it calls for the conclusion of the witness. The witness has not been qualified as an expert, and the witness was not the owner of the property.

(Argument on the objection.)

The Court: I have serious doubts about it, but we will permit the question to be answered.

(Testimony of Raymond Lewis.)

Mr. Hart: May we note an exception?

The Court: Answer the question.

A. I estimate the value at \$175,000.

Q. By Mr. Musgrove: That was the fair market value.

A. I considered it a fair value.

Q. Now, Mr. Lewis, what gives that property its value, in addition to ordinary real estate in that neighborhood.

A. If you can let me elaborate on that a little, I will base it on what has happened—I mean our experience over the last seven or eight years in that neighborhood, and also [64] over Los Angeles. They are now really putting a sport center up on that particular property—they are financing it I should say, and have already started construction on the back of the property. It is impossible in Los Angeles, to start with, to obtain a large piece of property with area enough that is already zoned for amusements, centrally located, with auto park available. In trying to obtain land in the vicinity of this particular block of land, we found out that none of it is zoned for amusements. The piece owned by the Pacific Electric between Fourth and Sixth Streets is not only not zoned for amusements, but has all restrictions on it for single purpose dwellings, and we have appeared before the Planning Commission and found that they will not change the zoning for amusement purposes. Therefore, we consider that this particular piece of

(Testimony of Raymond Lewis.)

property, regardless of what other pieces in the neighborhood were valued at, had a particular value in itself by reason of its zoning for amusements and the size of it.

Q. Is the entire block between Second and Third, and Vermont and the next street east, included in that amusement zone?

A. That is correct, that square block, and the property east of it and south of it are not zoned for amusements, and we made application before the Planning Commission and had several hearings and we couldn't get a change, and that application has been made in the last two years. [65]

Q. The property south of it is owned by the Pacific Electric Railway Company?

A. That is correct.

Q. Is that filled land?

A. There is a portion of it that is filled, but the fills are very shallow.

Q. At that time, Mr. Lewis, in January, or within a month or so one way or the other, did you have any plans for developing this property?

A. We had two plans—when I say “we” I mean both as the California Century Company and acting for the Amusement Enterprises—we intended, and when I say “we” I mean the California Century Company in this case—to sell it to the Amusement Enterprises, who in turn were arranging for finances for putting up an additional building for ice skating.

(Testimony of Raymond Lewis.)

The Court: I doubt that testimony has anything to do with the issues in the case.

Q. By Mr. Musgrove: Did you have any offers at that time, Mr. Lewis, to sell the property?

A. We were intending to sell it to the Amusement Enterprises.

Q. At what price?

A. In excess of \$150,000, approximately \$160,000, I think was the price we talked about.

Q. Did the fire that you had at the Palomar affect the [66] value of these properties?

A. Very materially, although I might add, Mr. Musgrove, that since the fire a group of us have formed a new company——

Mr. Hart: I object to that as irrelevant.

The Court: Objection sustained.

Q. By Mr. Musgrove: What in your opinion, Mr. Lewis, would the fact that this property was zoned for amusements or amusement enterprises have, would it increase or decrease the value?

Mr. Hart: Is it understood my objection goes to this testimony?

The Court: Yes, it is so understood.

A. If it was to be used for amusement purposes it would materially increase the value.

Q. By Mr. Musgrove: To what extent, Mr. Lewis?

A. The best way I can answer that is that we could buy real estate in that neighborhood for 50 per cent of the value of this particular piece. And

(Testimony of Raymond Lewis.)

when I say 50 per cent of the value, I mean 50 per cent of the value the Bank of America has set on the property in the last year, and for which we paid \$15,000 on a new option.

Mr. Hart: I move that be stricken.

The Court: It may go out.

Q. By Mr. Musgrove: At the time of the transfer of the property to the Amusement Enterprises, did the California Century Company retain any assets? [67]

A. Yes, it owned this parcel of ground with the buildings on it that is marked blue.

Q. And that is of the value you have stated?

A. That is correct.

[Endorsed]: Filed Jan. 26, 1942. [68]

[Endorsed]: No. 10084. United States Circuit Court of Appeals for the Ninth Circuit. California Century Company, a California Corporation, and Raymond Lewis, doing business as Lewis Construction Company, Appellants, vs. Security-First National Bank of Los Angeles, a national banking association, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 13, 1942.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth District

Case No. 10084

CALIFORNIA CENTURY CORPORATION, a
California corporation, RAYMOND LEWIS,
doing business as Lewis Construction Com-
pany,

Appellants,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS
ANGELES, a national banking association,
Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF PARTS OF RECORD FOR THE
CONSIDERATION THEREOF.

Appellant's Points on Appeal Shall Be:

1. The United States District Court had no juris-
diction over the subject matter or parties in said
action;

2. Subsequent to January 11, 1940 when the
California Century Company acquired its own
shares for its share in the Amusement Enterprises,
Inc., said California Century Company owned one
valuable piece of real estate and there was no evi-
dence produced at the trial from which it could
be adduced that said real estate was not of greater
value than the debts of the California Century
Company;

3. The transfer of shares of the Amusement Enterprises, Inc., to Raymond Lewis in exchange for shares of the California Century Company subsequent to January 11, 1939, by said California Century Company was done pursuant to the terms of a contract between said parties entered into on the 7th day of November, 1938, and before the appellee herein became a creditor of the California Century Company.

Appellant designates the following parts of the record which he thinks necessary for the consideration of the above points, to be included in the record on appeal:

1. Complaint;
2. Answer of California Century Company;
3. Answer of Raymond Lewis, doing business as Lewis Construction Company;
4. Memorandum of Opinion;
5. Findings of Fact and Conclusions of Law;
6. Judgment;
7. Notice of Appeal;
8. Plaintiff's Exhibit 2. (Bill of sale and Resolution);
9. Reporter's Transcript
 - page 12 line 17 to page 24 line 26;
 - page 28 line 4 to page 30 line 24;
 - page 32 line 15 to page 34 line 2;
 - page 38 line 6 to page 40 line 8;
 - page 43 line 21 to page 44 line 15;
 - page 62 line 22 to page 68 line 4.

Dated: March 10, 1942.

JOSEPH MUSGROVE,
THOMAS H. CANNAN
ROBERT M. MILLER

By JOS. MUSGROVE

Attorneys for Appellants.

Received copy of the within Statement of Points and Designation of Parts of Record for the Consideration Thereof, this 11th day of March, 1942.

HELGOE & HART

FH

Attorneys for Appellee.

[Endorsed]: Filed Mar. 13, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY APPELLEE, SECURITY-
FIRST NATIONAL BANK OF LOS AN-
GELES, OF ADDITIONAL PARTS OF THE
RECORD TO BE PRINTED IN TRAN-
SCRIPT

Appellee, Security-First National Bank of Los Angeles, a national banking association, hereby designates the following additional exhibits and additional portions of the reporter's transcript to be included in the record on appeal herein.

Said record shall include the following additional exhibits:

(1) Plaintiff's Exhibit No. 3 being a copy of the permit issued by the Corporation Commissioner,

State of California, dated January 11, 1939.

(2) Plaintiff's Exhibit No. 5 being the stipulated portions of schedules of assets and liabilities filed in the bankruptcy proceedings in the matter of the Estate of Raymond Lewis, doing business as Lewis Construction Company, debtor, Case No. 36226-C.

(3) Plaintiff's Exhibit No. 6 being a copy of a note in favor of Bank of America executed by California Century Corporation, dated October 30, 1938.

The record on appeal herein shall include also the following additional portions of the reporter's transcript:

Page 10 line 15 to page 12 line 17, both inclusive.

Page 24 line 26 to page 26 line 13, both inclusive.

Page 31 line 1 to page 32 line 15, both inclusive.

Page 43 line 1 to page 43 line 21, both inclusive.

Page 44 line 15 to page 45 line 9, both inclusive.

Page 46 line 4 to page 46 line 13, both inclusive.

Page 49 line 5 to page 54 line 5, both inclusive.

Page 55 line 1 to page 58 line 24, both inclusive.

Dated: March 19th, 1942.

HELGOE AND HART

By HOWARD W. HART

Attorney for Appellee, Security-
First National Bank of Los
Angeles, a national banking
association.

(AFFIDAVIT OF SERVICE BY MAIL
1013a, C. C. P.)

State of California,
County of Los Angeles—ss.

Thelma Farrell, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: Suite 715, 639 South Spring Street, Los Angeles, California that on the 19th day of March, 1942, affiant served the within Designation by appellee, Security First National Bank of Los Angeles, of Additional Parts of the Record to Be Printed in Transcript on the Appellants in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Appellants at the residence/office address of said attorney, as follows:

“Joseph Musgrove, Esq.,
720 Bartlett Building,
Robert M. Miller, Esq. and
Thos. A. Cannan, Esq.
215 West Seventh Street,
Los Angeles, California”;

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and/or there is a regular communication by mail between the place of mailing and the place so addressed.

THELMA FARRELL

Subscribed and sworn to before me this 19th day of March, 1942.

(Seal)

HOWARD W. HART

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires July 25, 1943.

[Endorsed]: Filed March 19, 1942. Paul P. O'Brien, Clerk.

